Supreme Court, U.S.
FILED

98 616 JUL 15 1998

OFFICE OF THE CLERK

NO._____

IN THE SUPREME COURT
OF
THE UNITED STATES OF AMERICA
OCTOBER TERM 1998

BEVERLY BARBER
PETITIONER,

VS.
LINDA MAYS WELCH
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

BEVERLY BARBER, PRO SE
105 FLORIDA ROAD
PELL CITY, ALABAMA 35125

34 pp

QUESTIONS FOR REVIEW

1. Whether a third party defendant can be added to a counterclaim judgment, amended to include the third party defendant, when the 3rd party defendant was **never** named in the summary judgment in the same action, made final pursuant to rule 54(b) Alabama Rules of Civil Procedure; affording no opportunity for adjudification on any issues relating to summary judgment.

2. Whether a decision of a trial court of Alabama and upheld by the Supreme Court of Alabama was so arbitrary and Capricious as disregarding fact, incompletely stating circumstances, and not following stated principles of Alabama jurisprudence, as to be a denial of due process guaranteed by the 14th Amendment of the United States Constitution.

LIST OF PARTIES

Beverly Barber
105 Florida Road
Pell City, Alabama 35125

Linda Mays Welch
1813 Lucinda Robey Place
Birmingham, Alabama

Canterbury Development Corp.
P.O. Box 130145
Birmingham, Alabama 35213

Attorneys for Petitioner
Ralph J. Bolen , Atty.
3928 Montclair Rd. Suite 134
Birmingham, Alabama

Jim Anton, Atty.
P.O. Box 606
Trussville, Alabama 35173

Ron Thrasher, Atty.
409 90th St. N.
Birmingham, Alabama 35206

LIST OF PARTIES

Attorneys for Respondent
James Ward, Atty.
P.O. Box 59807
Birmingham, Alabama 35259

Annette Talley Phebus, Atty.
P.O. Box 59807
Birmingham, Alabama 35259

Christopher Mosely, Atty.
2100 SouthBridge Parkway Ste. 650
Birmingham, AL 35209

TABLE OF CONTENTS

QUESTIONS FOR REVIEW i
LIST OF ALL PARTIES ii
TABLE OF CONTENTS iv
INDEX TO APPENDICIES v
TABLE OF AUTHORITIES vi
REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINION 1
STATEMENT OF JURISDICTION 2
STATEMENT OF THE CASE 3
FEDERAL QUESTIONS ARE RAISED 15
ARGUMENT 5
CONCLUSION 17

INDEX TO APPENDICES

Appendix A.....Decision of Alabama Supreme Court
. . . . . 1a

Appendix B.....Decision of Alabama Court of Civil
Appeals 3a

Appendix C.....Order of Circuit Court of Jefferson
County, amending judgment to
Include B everly Barber . . 5a

Appendix D.....Case Action Summary Sheet
Reflecting order of Judge Jack Carl
Jefferson County Circuit Court. .7a

Appendix E.....Summary Judgment Order entered
By Judge Jack Carl, Jefferson
County Circuit Court. 8a

TABLE OF AUTHORITIES

ex parte Blake, 624 So. 2d 528 (Ala. 1993) . . . . . 9 &10
Cockrell v. World's Finest Chocolates
349 So. 2d at 1117 13
Grady v. State 591 So. 2d 361
Heflin v. State
689 So 2d 163 (Ala. Civ. App. 1996) 6
Oliveri v. Thompson
803 F2d 1265 5FR Serv 3d 761 8

Ryder v. International Corp. v. State
439 So 2d 162 (Ala Civ. App) 11

Smith v. Smith 601 So 2d 1032 12

Western Union Telegraph v. Crowder
547 So 2d 876 (Ala 1989) 12

Williams v. Colonial Bank
626 So 2d 876 (Ala 1993) 13

Woodham v Leck's Service Station
(1964 CA5 Ga) 335 Fed 551 8 Fr Serv 4 lb 12 11

CONSTITUTION, STATUTES and RULES:

United States Constitution
Fifth and Fourteenth Amendments . . . . 5, 15& 16

Alabama Code of 1975
Sec. 34-14A-6 5

Alabama Rules of Civil Procedure
Rule 54 (b). 14
Rule 37 10
Rule 55(b) (2) 12
Alabama Rules of Appellate Procedure
Rule 4 14

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

The opinions and orders rendered by the Circuit Court of Jefferson County , Alabama Court of Civil Appeals and by the Alabama Supreme Court are reproduced and contained within the appendix attached hereto and made a part of this petition.

STATEMENT OF JURISDICTION

1. Date of entry of the judgment or decree sought to be reviewed: April 17, 1998.

2. The application for Writ of certiorari to the Alabama Supreme Court was denied on April 17, 1998.

3. The application for Writ of certiorari to the Alabama Court of Civil Appeals was denied on October 3, 1997. This Court's jurisdiction is invoked under the provisions of the 14th Amendment and 5th Amendment of the United States Constitution.

4. The motion for New Trial was denied by the Circuit Court of Jefferson County on April 15, 1997.

Statement Of The Case

In the instant case the trial court's "local rules" for the setting hearings, *differs* from the standard practice of the Alabama Rules of Civil Procedure. The local rule for setting of hearings, served to be a series of "traps" for an *unaware* and *uninformed* out-of-county resident. The record shows that counsel for Barber was informed of the " local rule", by a telephone call from the opposing counsel, *"after"* entry of final judgment and only days before an appeal was filed by Barber. A motion was then filed by Barber, for clarification of the local filing rule. There was no response from the court to this motion, with no hearing granted. All of Barber's motions were filed with the clerk of the court, in accordance with the Alabama Rules of Civil Procedure. Barber was not informed of this court's *special* requirements for the setting of hearings. The motions, filed by Barber, were stamped by the clerk of the court; however hearings were not granted. The local rule requires that motions filed in the trial court, must be filed in "open court", rather than with the clerk of the court; otherwise, the motions are not set, and are deemed denied without hearings..

The court had entered a *summary judgment ruling, **earlier***, in this action. Barber was **never** named in this summary judgment, made final pursuant to rule 54(b) Alabama Rules of Civil Procedure; therefore, there was no further opportunity for

adjudification on the issues relating to summary judgment. Barber was not named initially in the counterclaim judgment, in the same action; but the counterclaim judgment was amended almost four months to include Barber, a third party defendant, as *sanctions* on Welch's claims that Barber did not comply with the court's order for production of documents. Barber's motion for re-hearing was denied, with the court erroneously citing dates as re-hearing dates **before** the judgment was amended to include Barber. The handwritten order of April 15, 1997 was noted only on the case action summary sheet and erroneously calls Barbers' motion for a new trial, a nullity, requiring no hearing by the court, (appendix D, p 69 record) The record shows that numerous motions were filed by Barber with the clerk of the court; yet were denied without hearings, resulting in a $40,000.00 judgment being entered against Barber with no an opportunity to be heard. The record holds the documentation of Barber's compliance with the court's order for production of documents; however, no evidentiary hearing was granted to disprove Welch's claims to the contrary, regarding discovery.

ARGUMENT

WHETHER A THIRD PARTY CAN BE ADDED TO AN AMENDED COUNTERCLAIM JUDGMENT, WHEN THE 3RD PARTY DEFENDANT WAS NEVER NAMED IN SUMMARY JUDGMENT, IN THE SAME ACTION, MADE FINAL PURSUANT TO RULE 54 (b) ALABAMA RULES OF CIVIL PROCEDURE.

A judgment was rendered on Welch's counterclaim, then amended months later to include Barber. No opportunity was given Barber's counsel or Barber to be heard whatsoever at this hearing. Barber's former attorney prepared an emotional one page statement which appears in the record, indicating his frustrations that he nor his client, was given an opportunity to be heard whatsoever (see page 65 record on appeal).

The summary judgment ruling, in this same action, did not name Barber, and was *never* amended to include Barber; therefore afforded no opportunity to for adjudication on the issues relating to summary judgment. Barber filed a response to Welch's motion for summary judgment, in which Barber challenged the constitutionality of the statute 34-14A-6 as illegal and a denial of equal protection. The law as passed, relates that the law is for the good and welfare of the citizens of Alabama; however is being applied

unequally and the enforcement under the law, acts as a penalty to those who must be licensed.

Barber presented the issue to the courts of review, If Canterbury Development is the only party in summary judgment, made final pursuant to rule 54(b) Alabama Rules of Civil Procedure, is it in error to assess damage to Barber resulting from Canterbury's failure to have been properly licensed?

Barber's deposition, made a part of this record, shows that Barber had become a shareholder in Canterbury Development Corporation, one month prior to this action with Welch; however, there was no opportunity to present any argument at hearings. The counterclaim judgment was amended to include Barber, with no opportunity to be heard as evidenced by counsel's statement that appears in the record on page 65. No evidentiary was granted Barber, to show that she complied with the order for production of documents and the trial denied her motion for a new trial, calling this motion a nullity

The Alabama Supreme Court stands virtually alone among the circuits in upholding a trial court's decision to render a judgment on a counterclaim, when petitioner was not named in the summary judgment action with no opportunity for adjudication on the issues of summary judgment. In the instant case, Barber's motions continued to be denied without hearings. The Alabama Court of Civil Appeals issued no written opinion; however, referenced Heflin V. State 689 So 2d 163 (Ala. Civ. App. 1996) InHeflin,

the court said: It is well settled that when a trial court conducts a hearing and a transcript of that hearing is not present in the record, the appellate court must conclusively presume that the trial court had adequate evidence before it to support its findings--. In the instant case there is no transcript; however the record clearly shows denial of due process. by the statement of the attorney, Jim Anton, as to no opportunity to be heard, as well as, numerous affidavits from Barber, as to no opportunity to be heard, (see page 65 record on appeal). Motions were filed in behalf of Barber and stamped by the clerk of the court. These motions appear in the record, with the record also showing that these motions were denied without hearings. Barber filed evidence into the record showing compliance with the order for production of documents, (see page 26 - 27 , record on appeal) however the court did not grant a hearing, calling Barber's motion a nullity.

Since Barber was not named in the Summary Judgment ruling, there was no opportunity for adjudification by Barber on the issues relating to summary judgment; There was no opportunity to be heard at the hearing to modify the counterclaim judgment to include Barber; then the court called Barber's motion for a new trial a nullity, citing rehearing dates that were prior to Barber being added to the counterclaim judgment, see Appendices C, D and E.

WHETHER A DECISION OF A TRIAL COURT OF ALABAMA AND UPHELD BY THE SUPREME COURT OF ALABAMA WAS SO ARBITRARY AND CAPRICIOUS AS DISREGARDING FACT, INCOMPLETELY STATING CIRCUMSTANCES, AND NOT FOLLOWING STATED PRINCIPLES OF ALABAMA JURISPRUDENCE, AS TO BE A VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

The court imposed sanctions against Barber, finding in favor of Welch for the alleged failure by Barber to comply with the courts order for production of documents. Sanctions were entered without a hearing to disprove Welch's claims. The record shows a timely mailing receipt for the discovery to Welch; (see Page 26 supplement to, record on appeal) and a letter from Ralph Bolen, counsel for Barber, stating that he too, provided copies of the discovery; (see Page 27 -supplement, record on appeal.)

In: Oliveri v Thompson 803 F 2d 6265 5 FR Serv 3d 761 (CA 2 NY) The court held that an evidentiary hearing is not required before imposition of sanctions, although due process requires notice and an opportunity to be heard.

Welch mislead the courts . Welch's brief inadvertently admits dates of receipt of the same discovery, that they had previously set out, in their

motion for sanctions as never provided by Barber. Welch's brief also misleads the court to believe that Barber did not appear for depositions. Welch cited : Blake, 624 So. 2d 528 (Ala 1993) , In Blake, the trial court entered a default judgment against Blake for failure to appear at depositions and produce documents-- Welch brief stated, " that the events in Blake are very similar to the defendants refusal to appear for deposition and produce documents." Welch's brief stated that Barber appeared at the *second* deposition. The first deposition was postponed by *Welch's attorney* until Jan. 4, 1996; this fact is documented by a letter, signed by this attorney, Jim Ward. The deposition made apart of the record, shows that the deposition was conducted on the scheduled date, of Jan. 4, 1996 and that Barber was never guilty of failure to appear at a deposition. Welch continued to mislead the court, stating in their motion for sanctions that Barber provided inaudible tapes in discovery. Welch did not inform the court that the originals were made available to them(see p. 38 record on appeal). On that particular point, courts have held that discovery requirements are met when the original is made available Grady v State 591So 2d 480. The court said: compliance has been met, when given the original tape for review.

Welch mislead the courts . Welch's brief acknowledges receipt of a list of expenditures, for Welch's home. Welch's brief states that this list of expenditures was provided by Barber at discovery.

With this list in hand, Welch asked the question of Barber in deposition, "do you know how much you paid to sub-contractors?" Barber, could not quote the three pages of numbers from the list. She stated that she did not have the figures in her head but would have them when we go to trial. Welch took statement was taken out of context, leading the court to believe that she refused to give the information. Barber's statement from deposition appears in the courts' order for sanctions as follows, Barber says that she will have the figures in her mind when she comes to trial but has refused after several orders to produce them (See page 23, supplement to record.) Welch's brief inadvertently admits receiving a list of expenditures at deposition. This list gives the cost such as cost of appliances, names of vendors and amounts paid to sub-contractors, (see pages 155-157 record on appeal.) This specific information, list of vendors, cost of appliances etc. is set out in Welch's motion for sanctions as never received (see page 127, record on appeal.)

The Court of Civil Appeals issued no opinion but cited Rule 37, Alabama Rules of Civil Procedure and cited *Ex parte Blake, 624 So 2d 528 (Ala. 1993)* which upholds the entering of a default judgment as sanctions. . It was a gross error of the courts of review to fail to see that sanctions were wrongly entered against Barber. The foregoing facts, showing compliance with the discovery order, were cited in the record; as well as the copy of the receipt for mailing

that shows timely compliance with the court's order for production of documents; as well as a letter from Ralph Bolen, counsel for Barber, stating that he too provided copies of the discovery(see p. 27-supplement, record on appeal.)

Denial of due process revolves around the fact that Barber was unaware of the local filing rule of the trial court. Barber's attorney was informed of the local rule *after* the entry of final judgment. Barber's attorney was telephoned by the opposing counsel to inform him of the local filing rule for the setting of motions. After the information was received concerning the "local rule", Barber filed a motion for "clarification of the local rule" (see page 78, record on appeal.) There was no response from the court regarding this motion, with no hearing granted.

In Woodham v. American Cystoscope co. (CA5 Ga) 335 F2d 5518FR Serv 2d 4 1 b .12 the courts held: Where local rules of District Court turned out to be a series of traps for the free of fault plaintiff, dismissal of her action would be reversed, it appearing that her lawyer who had not been admitted to practice in this particular District Court was unaware of that court's ground rules and that because of his failure to comply with local rules, the complaint was dismissed. In Ryder v Inter'l Corp v State (Civ App) 439 So 2d 162 the court went on to say: We must find the trial courts action, abuse to constitute an abuse of discretion.

Default Judgment

At the onset of this litigation, a default judgment with leave to prove damages, was entered against Barber, *without notice* by the clerk of the court, for failure to answer or defend..This judgment was due to be set aside. Pursuant to rule 55 (b) (2), a 3 day notice must be given, prior to entry of default judgment, when an appearance has been made. Because Barber made an appearance in the form of an affidavit, clearly showing her intentions to defend and her counsel had appeared on her behalf at a hearing, *prior* to entry of default judgment by the clerk of the court , and Barber was entitled to a three day notice before the entry of default by the clerk, Rule 55 (b) (2) ARCP, (see p. 55-57 record on appeal). The three day requirement is ***not*** discretionary, the party is entitled to notice. In Smith v Smith 601 So 2d 1032 1992 The court said: We do find however, that once counsel appeared on Black's behalf, he was entitled to be served with written notice of application of default judgment at least 3 days prior to the hearing on such application in accordance with rule 55 (b) (2) . In Western Union Telegraph v Crowder, 547 So 2d 876 saying, that the court reviewed Alabama cases and found each case had determined an appearance had been made, that some written memorandum was filed in the court to indicate intention to defend the action in order to enlarge the time for answering a complaint. In the instant case, Barber, filed an affidavit, less than one month after being served, which clearing showed her intention to defend (See pages 55-57, record on

appeal.) The record contains an affidavit from Barber's counsel, stating that he appeared at a hearing in behalf of Barber *prior* to the entry of default, (see supplement to record p270). A letter from Welch's attorney, written prior to the entry of default judgment acknowledges his awareness of representation for Barber by counsel; yet Welch sent no notice prior to making application for default (see page -85 supplement, record on appeal).

In Cockrell v World's Finest Chocolates Co 349 So 2d 1117 the court held that the document filed by the defendant constituted an appearance and because the defendant was not given a 3 day notice by rule 55(b) (2) the default was to be vacated **regardless** of whether or not the defendant had shown a meritorious defense.

The Alabama Court of Civil Appeals issued no opinion in this case but cited Williams v. Colonial Bank, 626 So. 2d 1247, 1250 (Ala. 1993) In Williams, the courts stated: The court has established guidelines in order to assist the trial judge in exercising his discretion. The defaulting party must first show the existence of a meritorious defense and then an absence of willful conduct. In the instant case there was no willful conduct on the part of Barber; however as in Cockrell the default was due to be vacated **regardless** of whether or not the defendant had shown a meritorious defense. In this case, Barber's counsel answered the complaint 10 days late but had already appeared in her behalf at a hearing. An affidavit had

been filed into the record, by Barber, clearly showing her intent to defend. Barber's affidavit was filed less than 30 days after being served , (see p 55-57 record). No hearing was granted on Barber's motion to set aside the default judgment. Barber had no opportunity to be heard; therefore, no further opportunity to offer her defenses. The default judgment was entered ***by the clerk of the court,*** *with leave to prove damages*; therefore did not become final until a judgment was entered, naming Barber.

The Alabama Court of Civil Appeals opinion cited Rule 4 of the Alabama Rules of Civil Procedure, which provides 42 days for filing of an appeal. This rule, was *directed* to Canterbury Development Corp. Canterbury's appeal and the appeal of Beverly Barber were consolidated for judicial economy, by the Alabama Court of Civil Appeals.. Canterbury Development's appeal from the **summary judgment**, made final pursuant to rule 54(b) ARCP was deemed untimely. Welch's motion was granted, by the Alabama Court of Civil Appeals, to strike all arguments made, relating to summary judgment. Barber's appeal from the judgment on the counterclaim, was filed timely. Barber was not named in any judgment until the judgment on the counterclaim was amended, **March 3, 1997** to include Barber, *(Appendix C,* and p. 23, supplement record on appeal.) Barber filed a timely motion for a new trial on April 2, 1997, which was denied without hearing (See page 24- record.) In the trial court's order, on

April 15, 1997, the court denied the motion for new trial and erroneously cited dates, as re-hearing dates for Barber, *prior* to March 3, 1997 **before** Barber was ever named in *any* judgment.(*Appendix D* and p. 69 record) The order of April 15, 1997 was the first appealable order; since Barber was not included in any judgment prior to this date. A timely appeal was filed to The Alabama Court of Civil Appeals, in exactly 42 days, on May 27, 1997.

Other circuits seem to have such callous disregard for the controlling law, as shown by the court of Jefferson County, Alabama. This atrocity is such a rare instance in the history of jurisprudence. It is incomprehensible, that there could be such a denial of due process, as to have a trial court render a judgment without granting hearings or a trial by jury.

FEDERAL QUESTION IS RAISED

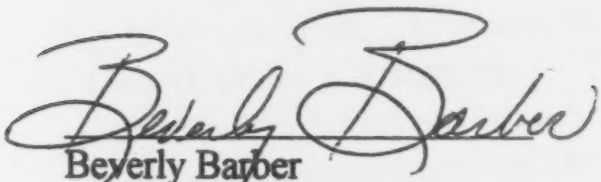
Petitioner claims denial of due process guaranteed by the 14th and 5th Amendment of the United States Constitution. The essential federal question was raised in Barber's Motion for A New Trial, p.33 supplement ro record on appeal)-- the motion saying, Barber was denied an opportunity to be heard at three separate hearings and denied due process. In the Motion for Correction of Order (page.84 record on appeal), Barber states there was no opportunity to be heard and a denial of her constitutional rights, invoking the 5th and 14th

Amendment of the United States Constitution. The record shows that in response to Welch's Motion for Summary Judgment, Barber challenged the constitutionality of the state statute, 34-14A-6 as a violation of equal protection under the law, invoking the 14th Amendment, (see page 54, record on appeal.) The writ of certiorari is due to be granted, in that the court of last resort has sanctioned the lower courts' action and denial of due process and its' departure from the accepted and usual course of judicial proceeding, as to call for an exercise of this courts' supervisory power.

CONCLUSION

The writ of certiorari is due to be granted on grounds of the denial of due process guaranteed by the Fifth and Fourteenth Amendment of Constitution of the United States and the writ of certiorari should be issued to correct and clarify the unresolved question of whether an amended judgment to include a third party defendant in a counterclaim can be entered, when a previously rendered summary judgment ruling in the same action did not name the third party defendant. This court's decision can then clarify to all circuits, the proper presumption on this issue.

Respectfully submitted,



Beverly Barber
105 Florida Road
Birmingham, Alabama 35125

APPENDIX A

IN THE SUPREME COURT OF ALABAMA
April 17, 1998

1970338
Ex parte Canterbury Development Corporation and Beverly Barber. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: 2960480 Canterbury Development Corporation v. Linda Mays Welch; and 2960944 Beverly Barber v Linda Mays Welch) (2960480 and 2960955) (Jefferson: CV-95-5105)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

KENNEDY, J.- Hooper, GJ., Maddox, Shores and See, JJ., concur.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court

Witness my hand this 17 day Apr.

1998
Robert G. Esdale
Clerk, Supreme Court of
Alabama

APPENDIX B

STATE OF ALABAMA—JUDICIAL DEPARTMENT

COURT OF CIVIL APPEALS

SPECIAL TERM, 1997

2960480 & 2960955

Canterbury Development Corporation v Linda Mays Welch
Beverly Barber v. Linda Mays Welch
Appeal from Jefferson Circuit Court (CV-95-5105)

Monroe, Judge

AFFIRMED. NO OPINION

See Rules 4, 53(a) (1) and (a) (2) (f), Ala. R. App. P.: Rule 37, Ala.R. Civ. P.; Williams v Colonial Bank, 626 So.
2d 1247, 1250 (Ala. 1993); Ex parte Blake, 624 so 2d 528
Civ. App. 1996)

The appellee's motion to strike is granted.

Robertson, P.J., and Yates, Crawley and Thompson,
J J., concur.

John H. Wilkerson, Jr. Clerk of the Court of Civil Appeals of Alabama, do hereby certify the

foregoing is a full, true and correct copy of the instrument(s) herewith set out as Same appears of record in said court.

Witness my hand this 3rd day of Oct. , 1997
John H. Wilkerson, Jr.
Clerk , Court of Civil Appeals of Alabama

APPENDIX C

IN THE CIRCUIT COURT , TENTH JUDICIAL CIRCUIT OF ALABAMA

CV 95-5105 JDC

CANTERBURY DEVELOPMENT CORPORATION
PLAINTIFF

VS.
LINDA MAYS WELCH
DEFENDANT

ORDER

This case came on to be heard upon the "Objection To The Form Of The Bond" filed February 7, 1997, by the defendant and the "Motion to Correct Order " filed February 6, 1997. Upon hearing the statements and argument of counsel, the Court finds that the following over should be entered.

It is , therefore ORDERED, ADJUDGES and DECREED by the court as follows:

One: It is the duty of the Circuit Clerk, not the Court to approve the form of a supersedeas bond. The Court has contacted the Clerk's office and has been advised, and the record show, that in the instant case, the Clerk has not approved the bond and, therefore, the collection of the judgment entered by the
Court is not stayed pending appeal and the Defendant may proceed to collect the judgment.

TWO: The "Motion to Correct Order" is due to be granted. By its "Order" dated September 25, 1996, the Court granted the Defendant leave to prove damages against

Canterbury Development Corp. and Beverly Barber. The "Final Judgment", entered by the Court on October 18, 1996, was against both Canterbury Development Corp. and Beverly Barber, but the Court made an error in writing the judgment so that it only reflected the judgment against Canterbury Development Corp. The "Final Judgment" dated October 18, 1996 , is, therefore, amended to be a judgment against both Canterbury Development Corp. and Beverly Barber.

DONE and ORDERED this 3rd day of March, 1996.

Jack D. Carl
CIRCUIT JUDGE

COPIES TO:
James S. Ward, Attorney
Christopher P. Mosely, Attorney
2100 Southbridge Parkway, Suite 650
Birmingham, AL. 35209

Beverly Barber
P.O. Box 130145
Birmingham, AL 35213

Jim Anton, Attorney
P.O. Box 606
Trussville, AL. 35173

APPENDIX D

CASE ACTION SUMMARY
CONTINUATION

Case Number
CV 95-5105

Date	ACTIONS, JUDGMENTS, CASE NOTES
4-15-97	The Court has been advised that the Plaintiff has Filed a Motion For A New Trial on 4-2-97 and a Modification Of Motion for a New Trial on 4-8-97, however, the Plaintiff had previously Filed a motion to alter, amend or vacate Judgment on 10-24-96 which was denied by the Order of the Court on 12-6-96 and a Motion to Set Aside the Order of the Court on 1-31-97, therefore, the latest two pleadings by the Plaintiff are a nullity and require no hearing or ruling by the Court.

Jack D. Carl

Judge's Order

Filed in open Court
This 15 day of Apr 1997
By RCK
E.O.D.

APPENDIX E

CIRCUIT COURT, TENTH JUDICIAL
CIRCUIT OF ALABAMA

CANTERBURY DEVELOPMENT
CORPORATION
PLAINTIFF

VS. CASE NO .
CV 95-5105

LINDA MAYS WELCH
DEFENDANT

SUMMARY JUDGMENT

This cause came on to be heard upon the "Defendant's Motion For Summary Judgment" filed on August 30, 1995, and after hearing statements and arguments of counsel, the court finds that there is no genuine issue as to a material fact and, therefore, the "Defendant's Motion For Summary Judgment" is due to be granted.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

ONE: The "Defendant's Motion For Summary Judgment " is granted and judgment is hereby rendered in favor of Defendant, Linda Mays Welch, and against Plaintiff, Canterbury Development Corporation.

TWO: There is no just reason for delay for the entry of a final judgment on the issues covered by this "Summary Judgment" and pursuant to Rule 54 (b), the Court expressly directs the entry of the final judgment on such issues.

TWO: The Court finds that the lien filed by Plaintiff is of no force and effect.

THREE: This cause shall proceed on the counterclaim .
DONE and ORDERED this 4th day of October, 1995.

Jack D. Carl
CIRCUIT JUDGE

Copies to:

Ralph J. Bolen, Attorney
3928 Montclair Road, Suite 134
Mt. Brook, AL. 35213-2415

James S. Ward, Attorney
Christopher P. Mosely, Attorney
2100 SouthBridge Parkway, Suite 650
Birmingham, AL. 35209